

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MOAZZEM SIKDER

Plaintiff,

v.

TOMMY VANDERFORD AND
J M BOZEMAN ENTERPRISES, INC.

Defendants.

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CIVIL ACTION NO. 4:21-cv-1255

**DEFENDANTS' TOMMY VANDERFORD AND J M BOZEMAN ENTERPRISES,
INC.'S NOTICE OF REMOVAL**

BACKGROUND

1. This is a personal injury action arising from a motor vehicle accident that occurred in Harris County, Texas on March 15, 2019.¹ Plaintiff Moazzem Sikder claims he suffered personal injuries as a result of the alleged negligence of Defendants. Defendants Tommy Vanderford and J M Bozeman Enterprises, Inc. file this Notice of Removal.

STATE COURT ACTION

2. Plaintiff filed suit against Defendants on February 26, 2021. The case was filed in the 133rd Judicial District Court of Harris County, Texas, under cause number 2021-11360, case style *Moazzem Sikder v. Tommy Vanderford and J M Bozeman Enterprises, Inc.*²

JURISDICTION

3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332(a) because this is a civil action in which the amount in controversy exceeds \$75,000,

¹ See Ex. B (Plaintiff's Original Petition).

² *Id.*

exclusive of interests and costs, and no Defendant is domiciled in the same state as the Plaintiff. Furthermore, under 28 U.S.C. § 1441(b)(2), no defendant is a citizen of Texas where this action was brought.

4. According to Plaintiff's Original Petition, Plaintiff is a resident of Texas and seeks monetary relief less than \$250,000.³ Plaintiff also "contends that his paid/incurred medical expenses are less than \$30,000.00 and seeks total damages of less than \$75,000.00 in this lawsuit."⁴ This language appears to be included to defeat diversity jurisdiction and prevent removal, which courts have found to be improper under similar circumstances.⁵ Moreover, it is facially apparent that the amount in controversy in this case exceeds \$75,000.00.⁶ Plaintiff claims that his paid/incurred medical expenses are less than \$30,000.00 without specifying an exact number.⁷ In addition, in claiming that he seeks less than \$75,000.00, Plaintiff fails to account for the fact that he is also seeking past and *future* medical expenses, physical pain and mental anguish, impairment, disfigurement, loss of income and reduced wage-earning capacity, and property damage.⁸ It is apparent that the amount in controversy exceeds \$75,000.⁹ Additionally, upon information and belief based upon medical and billing records received so far, the paid/incurred medical expenses appear to be closer to \$44,391.86 at this time, which doesn't take into account a procedure estimate in an amount of \$7,000.00. Therefore, Defendants have and can show by a preponderance of the

³ *Id.* at Sections II & III; *see also* TEX. R. CIV. P. 47(c).

⁴ Ex. B (Plaintiff's Original Petition) at Section III.

⁵ *See De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1412–13 (5th Cir. 1995); *Martinez v. Liberty Ins. Corp.*, No. H-19-3959, 2019 WL 6894497, at *1–2 (S.D. Tex. 2019); *Cantu v. Allstate Vehicle & Prop. Ins. Co.*, No. 7:16-CV-084, 2016 WL 1695284, at *1–2 (S.D. Tex. 2016).

⁶ *See De Aguilar*, 47 F.3d at 1413; *Martinez*, 2019 WL 6894497 at *1; *Cantu*, 2016 WL 1695284 at *1–2.

⁷ Ex. B (Plaintiff's Original Petition) at Section III.

⁸ *Id.* at Section IX.

⁹ *See De Aguilar*, 47 F.3d at 1413; *Martinez*, 2019 WL 6894497 at *1; *Cantu*, 2016 WL 1695284 at *1–2.

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evidence that the amount in controversy exceeds \$75,000.¹⁰ Finally, Plaintiff has failed to show with a legal certainty that his claim is for less than the \$75,000 jurisdictional threshold.¹¹

5. Defendant Tommy Vanderford is a resident of Arkansas.¹² Defendant J M Bozeman Enterprises, Inc. is both incorporated in and has its principal place of business in Arkansas.¹³

6. For these reasons, the amount-in-controversy and diversity requirements of 28 U.S.C. § 1332(a) are met, and the Court has original jurisdiction over this action.

TIMELINESS

7. After Moazzem Sikder filed his original petition on February 26, 2021, the Harris County district court issued a citation to Tommy Vanderford and J M Bozeman Enterprises, Inc. Tommy Vanderford and J M Bozeman Enterprises, Inc. were both served on or around March 16, 2021.¹⁴ This Notice of Removal has been filed within thirty days from service to Defendants. Under 28 U.S.C. § 1446(b)(1), this Notice of Removal is therefore timely and proper.

CONDITIONS PRECEDENT

8. Defendants have tendered the required filing fee to the Clerk of the United States District Court for the Southern District of Texas, Houston Division, along with this Notice of Removal. Defendant will promptly file a copy of this Notice of Removal with the Harris County Clerk and will provide notice to Plaintiff through his counsel of record.

¹⁰ See *Martinez*, 2019 WL 6894497 at *1; *Cantu*, 2016 WL 1695284 at *1–2.

¹¹ See *De Aguilar*, 47 F.3d at 1412; *Martinez*, 2019 WL 6894497 at *1; *Cantu*, 2016 WL 1695284 at *2.

¹² *Id.* at Section II.

¹³ *Id.*

¹⁴ See Ex. C (Plaintiff Service of Process on Defendant Tommy Vanderford); Ex. D (Plaintiff Service of Process on Defendant J M Bozeman Enterprises, Inc.).

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9. Copies of all executed process, pleadings, and orders filed in state court, as well as the docket sheet, an index of matters being filed, and list of counsel of record accompany this notice.¹⁵

CONDITIONAL REQUEST FOR HEARING AND JURISDICTIONAL DISCOVERY

10. If Plaintiff contests this removal, Defendants' request (1) a hearing regarding this Court's jurisdiction over, and the propriety of removal of, this matter; (2) the opportunity to present evidence demonstrating the existence of federal jurisdiction and the propriety of removal; and (3) leave to conduct limited discovery related to those matters.

Respectfully submitted,

THE FUENTES FIRM, P.C.

/s/ David Helmey

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¹⁵ See 28 U.S.C. § 1446(a); S.D. Tex. Local Rule LR81. See also Ex. A (Index); Ex. B (Plaintiff's Original Petition); Ex. C (Plaintiff's Service of Process on Vanderford); Ex. D (Plaintiff's Service of Process on J M Bozeman); Ex. E (List of Counsel of Record); and Ex. F (Harris County Docket Sheet).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel of record through the Court's ECF system on April 15, 2021.

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/s/ David Helmey
DAVID HELMEY